

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

LEVI S. McCUISTION

PLAINTIFF

v.

Civil No. 07- 5134

NURSE ANDREA GARRETT;
and DOCTOR HUSKINS

DEFENDANTS

ORDER

Defendants filed a motion for summary judgment (Doc. 13). To assist plaintiff in responding to the motion for summary judgment, the undersigned is propounding a questionnaire. The court will consider plaintiff's response to the questionnaire in issuing a report and recommendation on the motion for summary judgment.

For this reason, Levi S. McCuiston is hereby directed to complete, sign, and return the attached response to defendants' motion for summary judgment on or before **August 11, 2008**.

Plaintiff's failure to respond within the required period of time may subject this matter to dismissal for failure to comply with a court order.

IT IS SO ORDERED this 18th day of July 2008.

/s/ *J. Marschewski*

HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

LEVI S. McCUISTION

PLAINTIFF

v.

Civil No. 07- 5134

NURSE ANDREA GARRETT;
and DOCTOR HUSKINS

DEFENDANTS

RESPONSE TO SUMMARY JUDGMENT MOTION

TO: LEVI S. McCUISTION

These questions and answers will serve as your response to defendants' motion for summary judgment. You may use additional sheets of paper in responding to these questions.

You must file this response by **August 11, 2008**.

1(A). You were booked into the Benton County Detention Center (BCDC) on May 1, 2007, on failure to appear and violation of Arkansas Hot Check Law charges.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1.

(B). When you were booked in did you take any prescription medication with you or have any medication delivered to the jail for you?

Answer: Yes _____ No _____.

If you answered yes, please state what medication you took with you and what condition it was for.

2(A). On May 9th you submitted a medical request. You stated you had a toothache that had been going on for three days with no sign of relief. You asked for some kind of pain relief.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 1.

(B). You were seen by the nurse and prescribed Tylenol 1000 mg. a day for seven days.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit at page 1.

3. You were seen by Nurse Garrett on May 10th and she also authorized you to have Tylenol for your tooth pain.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 1.

4(A). On May 16th you submitted a medical request. You stated your teeth were very bad and you had toothaches all the time. You stated that some of the foods you couldn't eat because you had no teeth to chew with. You stated you would like some pain relief.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 2.

(B). Please state: (a) whether prior to your incarceration you were having trouble with your teeth; (b) if you were, state whether you had seen a dentist; (c) if you had not seen a dentist, state why you had not; and (d) state when you had last seen a dentist.

5. You were seen by the nurse on May 18th and given Advil for your tooth pain for seven days.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to the Defendants' Exhibit 2 at page 1.

6. On May 23rd you requested, and received, a copy of your probable cause affidavit.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 2.

7. On May 26th you submitted a medical request stating you had been having a toothache for three days. You asked to see the doctor or nurse. You said your toothaches were recurring from time to time.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

4.

8. You were seen by Nurse Garrett on May 30th. You were prescribed Amoxil, an antibiotic, for seven days, and Tylenol on an as needed basis every six hours for four weeks.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 1.

9. On June 4th you asked what your charges, court dates, and bond amounts were. You were provided with this information.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 5.

10. On June 13th you submitted a medical request. You stated your teeth had been causing you problems every since you had been there. You indicated you had finally gotten a "PRN" or as needed order when in E-pod. You indicated you were now in D-pod and they couldn't find your PRN order. So now you stated you were in pain once again and your jaw was swelling making it hard to eat and chew your food.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at 6.

11. In response, Nurse Garrett made a medication sheet authorizing you to have Tylenol, 1000 mg., three times a day, for two weeks.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 1.

12. On June 17th you submitted a medical request. You stated that your teeth were

causing you severe pain. You stated your jaw was swollen. You indicated it was hard for you to eat. You asked for something to reduce the swelling.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 7.

13(A). You were seen by the doctor on June 21st.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 2.

(B). Were you seen by Dr. Huskins on June 21st?

Answer: Yes _____ No _____.

If you answered no, please state who you saw.

(C). What treatment did he prescribe?

Answer:

14. On July 3rd you submitted a grievance complaining that since you had been at the BCDC you had lost fifteen pounds. You asked about getting on a high protein diet.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 8.

15. In response, you were told to eat your meals and you would gain or maintain your weight. You were told their menu met state standards.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 8.

16(A). On July 13th you submitted a medical request. You stated your teeth were causing you a lot of pain. You stated you believed that your wisdom teeth had now come in. You indicated your jaw was swollen up. You stated you had seen the nurse three times and the doctor once. All out got was Tylenol. You indicated this only relieved the pain. You stated you needed the wisdom teeth pulled.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 9.

(B). In response, someone wrote: "See Doctor."

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 9.

17. You were seen by medical staff on July 16th. Please state: (a) whether you saw the doctor or nurse on this date; and (b) what treatment you received. *See* Defendants' Exhibit 2 at page 2.

18(A). On July 30th you submitted a medical request. You stated your gum line was swollen and it was causing you a lot of pain. You indicated you would like something for pain and swelling.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 10.

(B). On July 31st you submitted a medical request stating you were in a lot of pain for your teeth and gums. You asked for something for the pain and swelling as soon as possible. You stated this had been an ongoing problem for the past three months. You asked to see the nurse or doctor as soon as possible.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 11.

19. You were seen by the nurse on August 1st and prescribed salt water rinses for five days and Ibuprofen.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 2.

20(A). You were seen by medical personnel on August 3rd. You were prescribed salt water rinses for five days.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 2.

(B). It does not appear that the writing on August 3rd is that of Nurse Garrett or Dr. Huskins. Nurse Garrett's initials do not appear on that date as they do by the dates of May

30th and June 13th. *See Defendants' Exhibit 2* at page 1 and page 2. Please state whether you were seen by Dr. Huskins, Nurse Garrett, or someone else on August 3rd.

Answer:

21. You received pain relief from the Tylenol, Ibuprofen and Advil that was prescribed for you.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain.

22. The salt water rinses that were prescribed helped with the pain and swelling.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain.

23. The Amoxil helped with your dental problems.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain.

24. You were seen by Nurse Garrett on May 20th, May 30th, and June 13th and she was present when you were seen by the doctor on June 21st. On the remaining occasions, your medical requests were responded to by other medical personnel and you were seen by other medical personnel at the BCDC.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain.

25. Your toothache came and went and was not constant.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to the Defendants' Exhibit 3 at page 4 ("these toothaches keep recurring from time to time").

26. You received all medication prescribed to you by Dr. Huskins and Nurse Garrett.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at pages 31-45.

27. You received all medical care and treatment prescribed to you by Dr. Huskins and Nurse Garrett.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain.

28. All orders of the jail medical staff were carried out by personnel at the BCDC.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain.

Answer:

[illegible]

30. Please explain in detail how Nurse Garrett exhibited deliberate indifference to your serious medical needs.

Answer:

31. You received all medical care and treatment Dr. Huskins believed in the exercise of his medical judgment that you needed.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

[illegible]

33. Did you suffer any physical injury as a result of a delay in your receiving medical/dental care while at the BCDC?

Answer: Yes _____ No _____.

If you answered yes, please state: (a) the physical injury you suffered; (b) the symptoms you experienced; (c) the severity of those symptoms; (d) whether you sought, or received medical treatment; (e) the treatment you received; (f) how long it took you to recover from the treatment; and (g) attach to this response medical records establishing the existence of the injuries or the effect the delay in treatment had on your health. If you do not have any records, explain to the court why you do not have any records.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

[illegible]

35. Were you transferred to the Arkansas Department of Correction (ADC) on September 25, 2007?

Answer: Yes _____ No _____.

If you answered no, please state if you were just released or transferred elsewhere.

36. Since you left the BCDC, please state: (a) what dental treatment you have received; (b) what dates you received the treatment on; and (c) where you received the treatment.

[illegible]

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS
TRUE AND CORRECT.

EXECUTED ON THIS _____ DAY OF _____ 2008.

LEVI S. McCUISTION